

AMENDED IN SENATE APRIL 20, 2009

**SENATE BILL**

**No. 681**

---

**Introduced by Senator Pavley**

February 27, 2009

---

~~An act to amend Sections 2525, 2526, 2550, and 2763.5 of the Water Code, to amend Section 6103.1 of the Government Code, and to amend Sections 1052, 1055, 1055.2, 1126, 1525, 1535, 1538, 1551, 1825, 1831, 1845, 2525, 2526, 2550, 2763.5, 5100, 5101, 5103, 5106, and 5107 of, to add Sections 1051.1, 1061, 1240.5, 1846, and 1847 to, to add Article 3.5 (commencing with Section 285) to Chapter 2.5 of Division 1 of, to add Chapter 3.5 (commencing with Section 1110) to Part 1 of Division 2 of, and to repeal Section 5108 of, the Water Code, relating to water.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 681, as amended, Pavley. ~~Statutory adjudication. Water diversion and use.~~

(1) Existing law generally provides that the state, or a county, city, district, or other political subdivision, or any public officer or body acting in its official capacity on behalf of any of those entities, may not be required to pay any fee for the performance of an official service. Existing law exempts from this provision any fee or charge for official services required pursuant to specified provisions of law relating to water use or water quality.

This bill would expand the exemption to other provisions relating to water use, including provisions that require the payment of fees to the State Water Resources Control Board (board) for official services relating to statements of water diversion and use.

(2) The California Constitution requires the reasonable and beneficial use of Water. Under the public trust doctrine, the board, among other

*state agencies, is required to take the public trust into account in the planning and allocation of water resources and to protect the public trust whenever feasible. The board and the California regional water quality control boards (regional boards) are required to set forth water quality objectives in state and regional water quality control plans. Existing law establishes the Water Rights Fund, which consists of various fees and penalties. The moneys in the Water Rights Fund are available upon appropriation by the Legislature for the administration of the board's water rights program.*

*This bill would authorize the board to issue, on its own motion or upon the petition of an interested party, an interim relief order in appropriate circumstances to implement or enforce these and related provisions of law. A person or entity that violates any interim relief order issued by the board would be liable to the board for a civil penalty in an amount not to exceed \$5,000 for each day in which a violation occurs. These funds would be deposited in the Water Rights Fund.*

*(3) Existing law authorizes the board to investigate all streams, stream systems, lakes, or other bodies of water, take testimony relating to the rights to water or the use of water, and ascertain whether water filed upon or attempted to be appropriated is appropriated under the laws of the state.*

*This bill would authorize the board, in conducting an investigation or proceeding for these purposes, to order any person or entity that diverts water or uses water to submit, under penalty of perjury, any technical or monitoring report related to the diversion or use of water by that person or entity. By expanding the definition of the crime of perjury, the bill would impose a state-mandated local program. The bill would authorize the board, in connection with the investigation or proceeding, to inspect the facilities of any person or entity to determine compliance with specified water use requirements.*

*(4) Existing law authorizes the board, upon the submission of a petition signed by a claimant to water of any stream system requesting a determination of rights among the claimants to that water, to enter an order granting the petition. After granting the petition, the board is required to investigate the stream system to gather information necessary to make a determination of the water rights of that stream system.*

*This bill would authorize the board, on its own motion, to proceed with a determination of the water rights of a stream system.*

(5) Existing law declares that the diversion or use of water other than as authorized by specified provisions of law is a trespass. Existing law authorizes the administrative imposition of civil liability by the board for a trespass in an amount not to exceed \$500 for each day in which the trespass occurs. Moneys generated by the imposition of civil liability under these provisions are deposited in the Water Rights Fund.

This bill would provide that a person or entity committing a trespass may be liable in an amount not to exceed the sum of \$1,000 for each day in which the trespass occurs and \$1,000 for each acre-foot of water diverted or used other than as authorized by those specified provisions of law.

(6) Existing law requires various state agencies, including the board and the regional boards, to carry out programs, projects, and activities on behalf of the Sacramento-San Joaquin Delta.

This bill would require the board to establish, on or before January 1, 2012, a 2-year pilot program to install real-time telemetered monitoring devices on diversions in, and tributary to, the Delta, and to submit to the Legislature a related report following the completion of the pilot program.

(7) Existing law, with certain exceptions, requires each person who, after December 31, 1965, diverts water to file with the board a statement of diversion and use. Existing law provides that a person who makes a material misstatement pursuant to these provisions may be subject to administratively imposed civil liability in an amount not to exceed \$500 for each violation. Funds derived from the imposition of these penalties are deposited in the Water Rights Fund. Existing law declares that statements of diversion and use are for informational purposes only and that the failure to file the statements, or the making of an error in the information submitted, with certain specified exceptions, does not have any legal consequences.

This bill would revise those provisions that exempt certain diversions or uses of water from that reporting requirement. The bill would also revise the information that is required to be set forth in the statement of diversion and use. The bill would provide that any person who fails to file the statement for a diversion and use that occurs on or after January 1, 2009, or who makes a material misstatement in connection with the submission of the statement, may be subject to administratively imposed civil liability in an amount not to exceed \$25,000 for each violation. The bill would delete the provision that a statement of

*diversion and use is for informational purposes only and, except as specified, without legal consequence.*

*The bill would require a person who files a statement of diversion and use to pay an annual fee, for deposit in the Water Rights Fund. The bill would include as recoverable costs, for which the board may be reimbursed from the fund upon appropriation therefor, costs incurred in connection with carrying out requirements relating to the statements of diversion and use and the performance of duties under the public trust doctrine and provisions that require the reasonable use of water.*

*The bill would require the department and the board to establish and maintain a centralized, publicly accessible database of water diversion and use. The department and the board would be authorized to adopt emergency regulations to carry out these requirements.*

*(8) Existing law authorizes the board to issue a cease and desist order against a person who is violating, or threatening to violate, certain requirements, including requirements set forth in a decision or order relating to the unauthorized use of water. Any person who violates a cease and desist order may be liable in an amount not to exceed \$1,000 for each day in which the violation occurs. Revenue generated from these penalties is deposited in the Water Rights Fund.*

*This bill would authorize the board to issue a cease and desist order in response to a violation of certain requirements relating to the unauthorized diversion or use of water or of a reporting or monitoring requirement established under a decision, order, or regulation adopted by the board pursuant to various provisions of law, including the public trust doctrine. The bill would increase the civil penalties that apply to a person who violates a cease and desist order by subjecting a violator to a civil penalty in an amount not to exceed the sum of \$2,500 for each day in which the violation occurs and \$2,500 for each acre-foot of water diverted or used in violation of the cease and desist order.*

*The bill would impose civil liability, in an amount not to exceed \$500 for each day in which a violation occurs, for a failure to comply with various reporting or monitoring requirements, including requirements imposed pursuant to the public trust doctrine. The bill would authorize the board to impose additional civil liability, in an amount not to exceed \$500 for each day in which a violation occurs, for the violation of a permit, license, or water quality certification, or an order or regulation involving the unreasonable use of water. Funds derived from the imposition of these civil penalties would be deposited in the Water Rights Fund.*

*The bill would specify that, in a proceeding before the board in which it is alleged that an appropriative water right has ceased, or is subject to prescribed action, it shall be deemed that a diversion or use required to be reported, as specified, did not occur unless that diversion or use was reported to the board as required by law.*

*(9) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

~~Existing law authorizes the State Water Resources Control Board, upon the submission of a petition signed by a claimant to water of any stream system requesting a determination of rights among the claimants to that water, to enter an order granting the petition. After granting the petition, the board is required to investigate the stream system to gather information necessary to making a determination of the water rights of that stream system.~~

~~This bill would authorize the board, on its own motion, to proceed with a determination of the water rights of a stream system.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

- 1     *SECTION 1. Section 6103.1 of the Government Code is*
- 2     *amended to read:*
- 3     6103.1. Section 6103 does not apply to any fee or charge for
- 4     official services required by ~~Parts~~ *Part 1 (commencing with Section*
- 5     *1000), Part 2 (commencing with Section 1200), Part 3*
- 6     *(commencing with Section 2000), and Part 4 (commencing with*
- 7     *Section 4000), Part 5 (commencing with Section 4999), or Part*
- 8     *5.1 (commencing with Section 51000) of Division 2 of the Water*
- 9     *Code.*
- 10    *SEC. 2. Article 3.5 (commencing with Section 285) is added*
- 11    *to Chapter 2.5 of Division 1 of the Water Code, to read:*

1     Article 3.5. *Public Access To Information On Diversion And*  
2   *Use*

3  
4     285. *The department and the board shall establish and maintain*  
5 *a centralized, publicly accessible database of water diversion and*  
6 *water use.*

7     286. (a) *The department or the board may adopt emergency*  
8 *regulations to implement this article.*

9     (b) *The emergency regulations may include, but are not*  
10 *necessarily limited to, the following:*

11     (1) *Regulations providing for the electronic filing of reports*  
12 *used in establishing and maintaining the database established*  
13 *under this article.*

14     (2) *Regulations establishing monitoring and reporting*  
15 *requirements implementing Section 1061.*

16     (3) *Regulations specifying the contents of, and format for,*  
17 *reports of diversion and use submitted under Part 5 (commencing*  
18 *with Section 4999) or Part 5.1 (commencing with Section 5100),*  
19 *of Division 2.*

20     (4) *Regulations specifying the contents of, and format for,*  
21 *reports submitted under subdivision (d) or (e) of Section 5101.*

22     (5) *Regulations requiring reporting of diversion and use by*  
23 *persons authorized to appropriate water under a registration for*  
24 *small domestic or livestock uses, permit or license, or who divert*  
25 *water within the meaning of Section 5101.*

26     (6) *Regulations requiring the reporting of any other water*  
27 *diversion or water use reasonably necessary to include in the*  
28 *database established under this article, and specifying the contents*  
29 *and format of those reports.*

30     (c) *Emergency regulations adopted pursuant to this section, or*  
31 *any amendments thereto, shall be adopted by the department or*  
32 *the board in accordance with Chapter 3.5 (commencing with*  
33 *Section 11340) of Part 1 of Division 3 of Title 2 of the Government*  
34 *Code. The adoption of these regulations is an emergency and shall*  
35 *be considered by the Office of Administrative Law as necessary*  
36 *for the immediate preservation of the public peace, health, safety,*  
37 *and general welfare. Notwithstanding Chapter 3.5 (commencing*  
38 *with Section 11340) of Part 1 of Division 3 of Title 2 of the*  
39 *Government Code, any emergency regulations or amendments to*  
40 *those regulations adopted under this section shall remain in effect*

1 until revised by the department or the board that adopted the  
2 regulations or amendments.

3 SEC. 3. Section 1051.1 is added to the Water Code, to read:

4 1051.1. (a) In conducting any investigation or proceeding  
5 specified in Section 1051, the board may order any person or entity  
6 that diverts or uses water to prepare, under penalty of perjury,  
7 and to submit to the board, any technical or monitoring program  
8 reports related to that person's or entity's diversion or use of water  
9 as the board may specify. The costs incurred by the person or  
10 entity in the preparation of those reports shall bear a reasonable  
11 relationship to the need for the report and the benefit to be obtained  
12 from the report. If the preparation of individual reports would  
13 result in a duplication of effort, or if the reports are necessary to  
14 evaluate the cumulative effect of several diversions or uses of  
15 water, the board may order any person or entity subject to this  
16 subdivision to pay a reasonable share of the cost of preparing  
17 reports.

18 (b) Any order issued under this section shall be served by  
19 personal service or registered mail on the party required to submit  
20 technical or monitoring program reports or to pay a share of the  
21 costs of preparing reports. Unless the board issues the order after  
22 a hearing, the order shall inform the party of the right to request  
23 a hearing within 30 days after the party has been served. If the  
24 party does not request a hearing within that 30-day period, the  
25 order shall take effect as issued. If the party requests a hearing  
26 within that 30-day period, the board may adopt a decision and  
27 order after conducting a hearing.

28 (c) Upon application of any person or entity or upon its own  
29 motion, the board may review and revise any order issued pursuant  
30 to this section, in accordance with the procedures set forth in  
31 subdivision (b).

32 (d) In conducting any investigation or proceeding specified in  
33 Section 1051, the board may inspect the facilities of any person  
34 or entity to ascertain whether the purposes of Section 100 and this  
35 division are being met and to ascertain compliance with any  
36 permit, license, certification, registration, decision, order or  
37 regulation issued under Section 275, this division, or Article 7  
38 (commencing with Section 13550) of Chapter 7 of Division 7.  
39 Except in the event of an emergency affecting the public health or  
40 safety, the inspection shall be made with the consent of the owner

1 *or possessor of the facilities or, if the consent is withheld, with a*  
2 *warrant duly issued pursuant to the procedure set forth in Title*  
3 *13 (commencing with Section 1822.50) of Part 3 of the Code of*  
4 *Civil Procedure.*

5 *SEC. 4. Section 1052 of the Water Code is amended to read:*

6 1052. (a) The diversion or use of water subject to this division  
7 other than as authorized in this division is a trespass.

8 ~~(b) Civil liability may be administratively imposed by the board~~  
9 ~~pursuant to Section 1055 for a trespass as defined in this section~~  
10 ~~in an amount not to exceed five hundred dollars (\$500) for each~~  
11 ~~day in which the trespass occurs.~~

12 ~~(e)~~

13 (b) The Attorney General, upon request of the board, shall  
14 institute in the superior court in and for any county ~~wherein in~~  
15 *which* the diversion or use is threatened, is occurring, or has  
16 occurred ~~appropriate~~ an action for the issuance of injunctive relief  
17 as may be warranted by way of temporary restraining order,  
18 preliminary injunction, or permanent injunction.

19 ~~(d)~~

20 (c) (1) Any person or entity committing a trespass as defined  
21 in this section may be liable ~~for a sum in an amount not to exceed~~  
22 ~~five hundred dollars (\$500) for each day in which the trespass~~  
23 ~~occurs. The~~ *sum of the following:*

24 (A) *One thousand dollars (\$1,000) for each day in which the*  
25 *trespass occurs.*

26 (B) *One thousand dollars (\$1,000) for each acre-foot of water*  
27 *diverted or used other than as authorized in this division.*

28 (2) *Civil liability may be imposed by the superior court.*

29 *The Attorney General, upon request of the board, shall petition*  
30 *the superior court to impose, assess, and recover any sums pursuant*  
31 *to this subdivision. In determining the appropriate amount, the*  
32 *court shall take into consideration all relevant circumstances,*  
33 *including, but not limited to, the extent of harm caused by the*  
34 *violation, the nature and persistence of the violation, the length of*  
35 *time over which the violation occurs, and the corrective action, if*  
36 *any, taken by the violator.*

37 (3) *Civil liability may be imposed by the board pursuant to*  
38 *Section 1055.*

39 ~~(e)~~



1 (d) All funds recovered pursuant to this section shall be  
2 deposited in the Water Rights Fund established pursuant to Section  
3 1550.

4 (f)

5 (e) The remedies prescribed in this section are cumulative and  
6 not alternative.

7 *SEC. 5. Section 1055 of the Water Code is amended to read:*

8 1055. (a) The executive director of the board may issue a  
9 complaint to any person or entity on which administrative civil  
10 liability may be imposed pursuant to Section 1052, ~~Section 1536,~~  
11 ~~Section 1845, or 1118, Article 4 (commencing with Section 1845)~~  
12 ~~of Chapter 12 of Part 2 of Division 2, or Section 5107.~~ The  
13 complaint shall allege the act or failure to act that constitutes a  
14 trespass or violation, the provision of law authorizing civil liability  
15 to be imposed, and the proposed civil liability.

16 (b) The complaint shall be served by personal notice or certified  
17 mail, and shall inform the party served that the party may request  
18 a hearing not later than 20 days from the date the party was served.  
19 The hearing shall be before *the board, or* a member of the board  
20 ~~as it may specify in accordance with Section 183.~~

21 ~~(c) After any hearing, the member shall report a proposed~~  
22 ~~decision and order to the board and shall supply a copy to the party~~  
23 ~~served with the complaint, the board's executive director, and any~~  
24 ~~other person requesting a copy. The member of the board acting~~  
25 ~~as hearing officer may sit as a member of the board in deciding~~  
26 ~~the matter. The board, after making an independent review of the~~  
27 ~~record and taking any additional evidence as may be necessary~~  
28 ~~that could not reasonably have been offered before the hearing~~  
29 ~~officer, may adopt, with or without revision, the proposed decision~~  
30 ~~and order.~~

31 *(c) The board may adopt an order setting administrative civil*  
32 *liability, or determining that no liability will be imposed, after any*  
33 *necessary hearing.*

34 (d) Orders setting administrative civil liability shall become  
35 effective and final upon issuance thereof and payment shall be  
36 made.

37 *SEC. 6. Section 1055.2 of the Water Code is amended to read:*

38 1055.2. No person or entity shall be subject to both civil  
39 liability imposed under Section 1055 and civil liability imposed  
40 by the superior court under ~~subdivision (d) of~~ Section 1052, Section

1 ~~1536 1118, or~~ Section 1845, *or Section 1846* for the same act or  
2 failure to act.

3 *SEC. 7. Section 1061 is added to the Water Code, to read:*

4 *1061. (a) The board shall establish by January 1, 2012, a*  
5 *two-year pilot program to install real-time, telemetered monitoring*  
6 *devices on diversions in, and tributary to, the Delta.*

7 *(b) The board shall report to the Legislature following*  
8 *completion of the pilot program. The report shall include*  
9 *recommendations as to whether the program should be continued,*  
10 *and whether the program should be extended to other areas of the*  
11 *state.*

12 *(c) As used in this section, “Delta” means the Sacramento-San*  
13 *Joaquin Delta, as described in Section 12200.*

14 *SEC. 8. Chapter 3.5 (commencing with Section 1110) is added*  
15 *to Part 1 of Division 2 of the Water Code, to read:*

16  
17 *CHAPTER 3.5. INTERIM RELIEF*  
18

19 *1110. (a) The board may issue an interim relief order in*  
20 *appropriate circumstances, after notice and an opportunity for a*  
21 *hearing, in proceedings to enforce all of the following:*

22 *(1) Section 2 of Article X of the California Constitution.*

23 *(2) The public trust doctrine.*

24 *(3) Water quality objectives adopted pursuant to subdivision*  
25 *(b) of Section 13142, Section 13170, or Section 13241.*

26 *(4) The requirements set forth in permits and licenses issued*  
27 *pursuant to Part 2 (commencing with Section 1200), including*  
28 *actions that invoke the board’s reserved jurisdiction.*

29 *(5) Division 1 (commencing with Section 100), this division, or*  
30 *Article 7 (commencing with Section 13550) of Chapter 7 of*  
31 *Division 7.*

32 *(6) Section 5937 of the Fish and Game Code.*

33 *(b) The board may commence an interim relief proceeding on*  
34 *its own motion or upon the petition of any interested party. The*  
35 *board shall not accept any petition that does not include all of the*  
36 *following information:*

37 *(1) The name and address of the petitioner.*

38 *(2) A description of the specific diversion or use of water that*  
39 *the petitioner is contesting.*

1     (3) *A statement of the petitioner's interest in the contested*  
2 *diversion or use of water.*

3     (4) *Identification of the proceedings in which interim relief is*  
4 *requested.*

5     (5) *A description of the harm or injury complained of.*

6     (6) *An explanation of the nexus between the diversion or use*  
7 *and the alleged harm or injury.*

8     (7) *A statement of reasons that would justify the relief that the*  
9 *petitioner has requested.*

10    (8) *Any additional information that the board may deem*  
11 *appropriate.*

12    (c) *The board may dismiss a petition that does not raise*  
13 *substantial issues that are appropriate for review.*

14    (d) *Unless the board concludes that consideration of the matter*  
15 *is urgent, the board shall provide notice at least 20 days before*  
16 *the hearing date. In its discretion, the board may provide that the*  
17 *evidence to be considered shall be based on declarations under*  
18 *penalty of perjury, the testimony of witnesses at the hearing, or*  
19 *both. The board shall also consider oral or written legal argument*  
20 *that is provided in a timely manner by the parties. The board may*  
21 *establish a schedule for filing declarations and written arguments.*

22    (e) *If the board issues an interim relief order without providing*  
23 *at least 20 days' notice before the hearing date, or if the board*  
24 *issues an interim relief order after considering the declaration of*  
25 *any witness who is not available for cross examination, the interim*  
26 *relief order shall remain in effect for a period not to exceed 180*  
27 *days unless the party to whom the interim relief order is issued*  
28 *agrees to an extension of that period. This subdivision is not a*  
29 *limitation on the authority of the board to issue any additional*  
30 *interim relief in response to changed circumstances.*

31    (f) *In determining whether to provide interim relief, and the*  
32 *nature and extent of the relief, the board shall consider all relevant*  
33 *circumstances, including the effects on other legal users of water,*  
34 *fish, wildlife, and other instream beneficial uses, the extent of*  
35 *harm, the necessity for relief, and any appropriate measure to*  
36 *minimize any adverse effects of providing interim relief. Sufficient*  
37 *grounds shall exist for interim relief upon the same showing as*  
38 *would be required for a superior court to grant a preliminary*  
39 *injunction.*

1     1111. (a) As part of the interim relief order, the board may  
2     require the water diverter or user to do any of the following:

3     (1) Cease all harmful practices.

4     (2) Employ specific procedures and operations to prevent or  
5     mitigate the harm.

6     (3) Complete technical and monitoring work and prepare and  
7     submit reports on that work, including draft environmental  
8     documentation.

9     (4) Participate in studies to develop proposed streamflow  
10    requirements, and reimburse the Department of Fish and Game  
11    for the costs of those studies, pursuant to Division 10 (commencing  
12    with Section 10000) of the Public Resources Code.

13    (5) Reimburse the board's expenses for the preparation of any  
14    necessary environmental documentation.

15    (6) Take other required action.

16    (b) The board shall set a schedule for compliance with any  
17    interim relief order. If a schedule is not being met, the board may  
18    hold a hearing, in accordance with Section 1110, to consider  
19    changes or other actions which are appropriate under the  
20    circumstances, including, but not limited to, further interim relief  
21    or changes in the schedule.

22    1112. If the board orders interim relief, the board shall set a  
23    schedule, as soon as reasonably possible, for the board's  
24    consideration of permanent relief. The schedule shall include  
25    actions which the water diverter or user is required to undertake  
26    to ensure timely consideration of the permanent relief. The actions  
27    required of the water diverter or user may include, but are not  
28    limited to, the completion of technical and monitoring work, the  
29    preparation and submittal of reports on that work, including draft  
30    environmental documentation, and the reimbursement of the  
31    board's expenses. If the schedule is not being met, the board may  
32    hold a hearing in accordance with Section 1110 to consider  
33    changes or other actions as may be appropriate under the  
34    circumstances. Any permanent relief shall be granted after notice  
35    and an opportunity for a hearing.

36    1113. (a) Except as otherwise specified in this section, any  
37    interim relief order issued by the board is exempt from the  
38    requirements of Division 13 (commencing with Section 21000) if  
39    the Public Resources Code if the board makes either of the  
40    following findings:

1     (1) *Providing interim relief will not have a significant adverse*  
2 *effect on the environment.*

3     (2) *Providing interim relief will result in environmental benefits,*  
4 *or avoid adverse impacts on the environment which may result*  
5 *from providing interim relief. If the board makes a finding pursuant*  
6 *to this paragraph, the board shall also adopt the finding or findings*  
7 *specified in Section 21081 of the Public Resources Code.*

8     (b) *Any findings of the board pursuant to this section shall be*  
9 *supported by substantial evidence in the record. If the board makes*  
10 *the findings specified in paragraph (1) of subdivision (a) of Section*  
11 *21081 of the Public Resources Code, or if the board finds that*  
12 *providing interim relief will not have a significant adverse effect*  
13 *on the environment because any potentially significant adverse*  
14 *effect will be avoided as a result of mitigation incorporated in the*  
15 *board's order, the board shall adopt a reporting and monitoring*  
16 *program in accordance with Section 21081.6 of the Public*  
17 *Resources Code.*

18     (c) *Sections 21167, 21167.1, 21167.4, 21167.5, 21167.6,*  
19 *21167.7, 21167.8, 21168, 21168.5, 21168.9, and 21177 of the*  
20 *Public Resources Code shall apply to any action or proceeding to*  
21 *attack, review, set aside, void, or annul any action or decision of*  
22 *the board pursuant to this chapter on grounds of noncompliance*  
23 *with this section.*

24     1114. *The board may review and revise any part of an interim*  
25 *relief order at any time after notice to all interested parties and*  
26 *an opportunity for hearing.*

27     1115. *The adoption of an interim relief order by the board*  
28 *shall not be deemed to alter the burdens of proof or the burdens*  
29 *of coming forward in a subsequent proceeding for permanent relief*  
30 *before the board on the same factual and legal issues.*

31     1116. *This chapter is not a limitation on the jurisdiction of any*  
32 *court or agency over any matter within that court or agency's*  
33 *jurisdiction.*

34     1117. *If any water diverter or user fails to comply with any*  
35 *part of an interim relief order, the Attorney General, upon the*  
36 *request of the board, shall petition the superior court for the*  
37 *issuance of a prohibitory or mandatory injunctive relief, as*  
38 *necessary, through the issuance of a temporary restraining order,*  
39 *preliminary injunction, or permanent injunction.*

1     1118. (a) Any person or entity who violates any interim relief  
2     order issued by the board is liable for a civil penalty of not more  
3     than five thousand dollars (\$5,000) for each day in which a  
4     violation occurs.

5     (1) Civil liability may be imposed by the superior court. The  
6     Attorney General, upon request of the board, shall petition the  
7     superior court to impose the liability.

8     (2) Civil liability may be imposed administratively by the board  
9     pursuant to Section 1055.

10    (b) In determining the appropriate amount, the court or the  
11    board, as the case may be, shall consider all the relevant  
12    circumstances, including the extent of harm caused by the violation,  
13    the nature and persistence of the violation, the length of time over  
14    which the violation occurs, and any corrective action undertaken  
15    by the violator.

16    (c) Funds derived from civil penalties assessed pursuant to this  
17    section shall be deposited in the Water Rights Fund.

18    SEC. 9. Section 1126 of the Water Code is amended to read:

19    1126. (a) It is the intent of the Legislature that all issues  
20    relating to state water law decided by the board be reviewed in  
21    state courts, if a party seeks judicial review. It is further the intent  
22    of the Legislature that the courts assert jurisdiction and exercise  
23    discretion to fashion appropriate remedies pursuant to Section 389  
24    of the Code of Civil Procedure to facilitate the resolution of state  
25    water rights issues in state courts.

26    (b) Any party aggrieved by any decision or order may, not later  
27    than 30 days from the date of final action by the board, file a  
28    petition for a writ of mandate for review of the decision or order.  
29    Except in cases where the decision or order is issued under  
30    authority delegated to an officer or employee of the board,  
31    reconsideration before the board is not an administrative remedy  
32    that is required to be exhausted before filing a petition for writ of  
33    mandate. The time for filing the petition for writ of mandate and  
34    the time for filing an action or proceeding in which the board is a  
35    respondent under Section 21167 of the Public Resources Code  
36    shall be extended for any person who seeks reconsideration by the  
37    board pursuant to this article. The amendment of this subdivision  
38    made during the 2001 portion of the 2001–02 Regular Session  
39    does not constitute a change in, but is declaratory of, existing law.

(c) Section 1094.5 of the Code of Civil Procedure shall govern judicial proceedings under this section. For the purposes of subdivision (c) of Section 1094.5 of the Code of Civil Procedure, the court shall exercise its independent judgement on the evidence in any case involving the judicial review of a cease and desist order issued pursuant to Article 2 (commencing with Section 1831) of Chapter 12 of Part 2 of Division 2, and in any other case in which the court is authorized by law to exercise its independent judgement on the evidence. *The scope of review of any decision or order issued under Chapter 3.5 (commencing with Section 1110) shall be the same as for a court of appeal review of a superior court decision.*

(d) If no aggrieved party petitions for a writ of mandate within the time provided by this section, the decision or order of the board is not subject to review by any court.

(e) In any court case reviewing a decision or order by the state board relating to a permit or license to appropriate water held by the state through the department or any other state agency, or to a permit or license to appropriate water held by the United States through the Bureau of Reclamation or any other federal agency, the election by the United States, or any agency thereof, not to be a party shall not, in and of itself, be the basis for dismissal pursuant to Section 389 of the Code of Civil Procedure or any other provision of law.

SEC. 10. Section 1240.5 is added to the Water Code, to read:

1240.5. *In any proceeding before the board in which it is alleged that a right to appropriate water has ceased or is subject to forfeiture or revocation for nonuse, it shall be deemed that any diversion or use required to be reported pursuant to any reporting or monitoring requirement established under any permit, license, certificate, registration, decision or order, or regulation issued by the board pursuant to this division, Section 275 or 286, Article 7 (commencing with Section 13550) of Division 7, or the public trust doctrine did not occur unless that diversion or use was reported to the board.*

SEC. 11. Section 1525 of the Water Code is amended to read:

1525. (a) Each person or entity who holds a permit or license to appropriate water, and each lessor of water leased under Chapter 1.5 (commencing with Section 1020) of Part 1, shall pay an annual fee according to a fee schedule established by the board.

(b) Each person or entity who files any of the following shall pay a fee according to a fee schedule established by the board:

(1) An application for a permit to appropriate water.

(2) A registration of appropriation for a small domestic use or livestock stockpond.

(3) A petition for an extension of time within which to begin construction, to complete construction, or to apply the water to full beneficial use under a permit.

(4) A petition to change the point of diversion, place of use, or purpose of use, under a permit or license.

(5) A petition to change the conditions of a permit or license, requested by the permittee or licensee, that is not otherwise subject to paragraph (3) or (4).

(6) A petition to change the point of discharge, place of use, or purpose of use, of treated wastewater, requested pursuant to Section 1211.

(7) An application for approval of a water lease agreement.

(8) A request for release from priority pursuant to Section 10504.

(9) An application for an assignment of a state-filed application pursuant to Section 10504.

(10) *A statement of water diversion and use pursuant to Part 5.1 (commencing with Section 5100).*

(c) The board shall set the fee schedule authorized by this section so that the total amount of fees collected pursuant to this section equals that amount necessary to recover costs incurred in connection with the issuance, administration, review, monitoring, and enforcement of permits, licenses, certificates, and registrations to appropriate water, water leases, *statements of diversion and use*, and orders approving changes in point of discharge, place of use, or purpose of use of treated wastewater. The board may include, as recoverable costs, but is not limited to including, the costs incurred in reviewing applications, registrations, *statements of diversion and use*, petitions and requests, prescribing terms of permits, licenses, registrations, and change orders, enforcing and evaluating compliance with permits, licenses, certificates, registrations, change orders, and water leases, inspection, monitoring, planning, modeling, reviewing documents prepared for the purpose of regulating the diversion and use of water, applying and enforcing *the public trust doctrine*, Section 275, the prohibition set forth in Section 1052 against the unauthorized



1 diversion or use of water subject to this division, *the requirements*  
2 *under Part 5.1 (commencing with Section 5100) for filing*  
3 *statements of diversion and use*, and the administrative costs  
4 incurred in connection with carrying out these actions.

5 (d) (1) The board shall adopt the schedule of fees authorized  
6 under this section as emergency regulations in accordance with  
7 Section 1530.

8 (2) For filings subject to subdivision (b), the schedule may  
9 provide for a single filing fee or for an initial filing fee followed  
10 by an annual fee, as appropriate to the type of filing involved, and  
11 may include supplemental fees for filings that have already been  
12 made but have not yet been acted upon by the board at the time  
13 the schedule of fees takes effect.

14 (3) The board shall set the amount of total revenue collected  
15 each year through the fees authorized by this section at an amount  
16 equal to the revenue levels set forth in the annual Budget Act for  
17 this activity. The board shall review and revise the fees each fiscal  
18 year as necessary to conform with the revenue levels set forth in  
19 the annual Budget Act. If the board determines that the revenue  
20 collected during the preceding year was greater than, or less than,  
21 the revenue levels set forth in the annual Budget Act, the board  
22 may further adjust the annual fees to compensate for the over or  
23 under collection of revenue.

24 ~~(e) Annual fees imposed pursuant to this section for the 2003–04~~  
25 ~~fiscal year shall be assessed for the entire 2003–04 fiscal year.~~

26 *SEC. 12. Section 1535 of the Water Code is amended to read:*

27 1535. (a) Any fee subject to this chapter that is required in  
28 connection with the filing of an application, registration, request,  
29 *statement*, or proof of claim, other than an annual fee required after  
30 the period covered by the initial filing fee, shall be paid to the  
31 board.

32 (b) If a fee established under subdivision (b) of Section 1525,  
33 Section 1528, or Section 13160.1 is not paid when due, the board  
34 may cancel the application, registration, petition, request, *statement*,  
35 or claim, or may refer the matter to the State Board of Equalization  
36 for collection of the unpaid fee.

37 *SEC. 13. Section 1538 of the Water Code is amended to read:*

38 1538. (a) In any proceeding pursuant to Section 1052 in which  
39 it is determined that there has been a violation of the prohibition  
40 against the unauthorized diversion or use of water subject to this

1 division, the board or court, as the case may be, may impose an  
2 additional liability in the amount of any annual fees that would  
3 have been required under this division if the diversion or use had  
4 been authorized by a permit or license to appropriate water.

5 *(b) In any proceeding pursuant to Section 5107 in which the*  
6 *board imposes liability for a failure to file a statement of diversion*  
7 *and use or for a material misstatement in a statement of diversion*  
8 *and use, the board may impose an additional liability in the amount*  
9 *of any fees that have not been paid but would have been required*  
10 *under this division if the statement of diversion and use had been*  
11 *filed and did not make any material misstatement.*

12 *(c) The additional liability imposed under this section may*  
13 *include interest, at the rate provided under Section 685.010 of the*  
14 *Code of Civil Procedure, from the dates the annual fees would*  
15 *have been assessed.*

16 *SEC. 14. Section 1551 of the Water Code is amended to read:*

17 1551. All of the following shall be deposited in the Water  
18 Rights Fund:

19 (a) All fees, expenses, and penalties collected by the board or  
20 the State Board of Equalization under this chapter and Part 3  
21 (commencing with Section 2000).

22 (b) All funds collected under Section 1052,~~1845~~ *Section 1118,*  
23 *Article 4 (commencing with Section 1845) of Chapter 12, or Section*  
24 *5107.*

25 (c) All fees collected under Section 13160.1 in connection with  
26 certificates for activities involving hydroelectric power projects  
27 subject to licensing by the Federal Energy Regulatory Commission.

28 *SEC. 15. Section 1825 of the Water Code is amended to read:*

29 1825. It is the intent of the Legislature that the state should  
30 take vigorous action to enforce the terms and conditions of permits,  
31 licenses, certifications, and registrations to appropriate water, to  
32 enforce state board orders and decisions,~~and~~ *to prevent the*  
33 *unlawful diversion of water, and to prevent the waste,*  
34 *unreasonable use, unreasonable method of use, or unreasonable*  
35 *method of diversion of water, and to enforce reporting and*  
36 *monitoring requirements.*

37 *SEC. 16. Section 1831 of the Water Code is amended to read:*

38 1831. (a) When the board determines that any person is  
39 violating, or threatening to violate, any requirement described in

subdivision (d), the board may issue an order to that person to cease and desist from that violation.

(b) The cease and desist order shall require that person to comply forthwith or in accordance with a time schedule set by the board.

(c) The board may issue a cease and desist order only after notice and an opportunity for hearing pursuant to Section 1834.

(d) The board may issue a cease and desist order in response to a violation or threatened violation of any of the following:

(1) The prohibition set forth in Section 1052 against the unauthorized diversion or use of water subject to this division.

(2) Any term or condition of a permit, license, certification, or registration issued under this division.

(3) Any decision or order of the board issued under this part, Section 275, or Article 7 (commencing with Section 13550) of Chapter 7 of Division 7, in which decision or order the person to whom the cease and desist order will be issued, or a predecessor in interest to that person, was named as a party directly affected by the decision or order.

(4) *Any regulation adopted under Section 275 or 286 provided that the board shall not issue a cease and desist order for violation of a regulation adopted by the department, other than a regulation jointly adopted by the department and board, unless enforcement is requested by the department.*

(5) *Any reporting or monitoring requirement established under any decision, order, or regulation issued by the board pursuant to this division, Section 275 or 286, Article 7 (commencing with Section 13550) of Division 7, or the public trust doctrine.*

(e) This article ~~shall~~ *does* not authorize the board to regulate in any manner, the diversion or use of water not otherwise subject to regulation ~~of by the board under this part.~~

*SEC. 17. Section 1845 of the Water Code is amended to read:*

1845. (a) Upon the failure of any person to comply with a cease and desist order issued by the board pursuant to this chapter, the Attorney General, upon the request of the board, shall petition the superior court for the issuance of prohibitory or mandatory injunctive relief as appropriate, including a temporary restraining order, preliminary injunction, or permanent injunction.

(b) (1) Any person or entity who violates a cease and desist order issued pursuant to this chapter may be liable ~~for a sum in an~~

1 ~~amount not to exceed one thousand dollars (\$1,000) for each day~~  
2 ~~in which the violation occurs; the sum of the following:~~

3 (A) *Two thousand five hundred dollars (\$2,500) for each day*  
4 *in which the violation occurs.*

5 (B) *Two thousand five hundred dollars (\$2,500) for each*  
6 *acre-foot of water diverted or used in violation of the cease and*  
7 *desist order.*

8 (2) Civil liability may be imposed by the superior court. The  
9 Attorney General, upon the request of the board, shall petition the  
10 superior court to impose, assess, and recover those sums.

11 (3) Civil liability may be imposed administratively by the board  
12 pursuant to Section 1055.

13 (c) In determining the appropriate amount, the court, or the  
14 board, as the case may be, shall take into consideration all relevant  
15 circumstances, including, but not limited to, the extent of harm  
16 caused by the violation, the nature and persistence of the violation,  
17 the length of time over which the violation occurs, and the  
18 corrective action, if any, taken by the violator.

19 (d) All funds recovered pursuant to this section shall be  
20 deposited in the Water Rights Fund established pursuant to Section  
21 1550.

22 *SEC. 18. Section 1846 is added to the Water Code, to read:*

23 *1846. (a) Any person or entity subject to a monitoring or*  
24 *reporting requirement specified in subdivision (f) who violates*  
25 *that reporting or monitoring requirement, makes a material*  
26 *misstatement in any record or report submitted under that*  
27 *reporting or monitoring requirement, or tampers with or renders*  
28 *inaccurate any monitoring device required under that reporting*  
29 *or monitoring requirement shall be liable for a sum not to exceed*  
30 *five hundred dollars (\$500) for each day in which the violation*  
31 *occurs.*

32 (b) Civil liability may be imposed by the superior court. The  
33 Attorney General, upon the request of the board, shall petition the  
34 superior court to impose, assess, and recover those sums.

35 (c) Civil liability may be imposed administratively by the board  
36 pursuant to Section 1055.

37 (d) In determining the appropriate amount, the court, or the  
38 board, as the case may be, shall take into consideration all relevant  
39 circumstances, including, but not limited to, the extent of harm  
40 caused by the violation, the nature and persistence of the violation,

1 *the length of time over which the violation occurs, and the*  
2 *corrective action, if any, taken by the violator.*

3 *(e) All funds recovered pursuant to this section shall be*  
4 *deposited in the Water Rights Fund established pursuant to Section*  
5 *1550.*

6 *(f) (1) This section applies to any reporting or monitoring*  
7 *requirement established under any permit, license, certificate,*  
8 *registration, decision or order, or regulation issued by the board*  
9 *pursuant to this division, Section 275, Section 286, Article 7*  
10 *(commencing with Section 13550) of Division 7, or the public trust*  
11 *doctrine.*

12 *(2) This section also applies to any reporting or monitoring*  
13 *requirement established by the department under Section 275 or*  
14 *286, if the department requests enforcement pursuant to this*  
15 *section.*

16 *(3) This section does not provide a basis for imposing liability*  
17 *on a watermaster who is subject to reporting or monitoring*  
18 *requirements but does not divert or use the water subject to those*  
19 *requirements.*

20 *SEC. 19. Section 1847 is added to the Water Code, to read:*

21 *1847. (a) Any person or entity who violates any term or*  
22 *condition of a permit, license, or certification issued under this*  
23 *division or any order or regulation adopted by the board under*  
24 *Section 275 may be liable in an amount not to exceed five hundred*  
25 *dollars (\$500) for each day in which the violation occurs.*

26 *(b) Civil liability may be imposed by the superior court. The*  
27 *Attorney General, upon the request of the board, shall petition the*  
28 *superior court to impose, assess, and recover those sums.*

29 *(c) Civil liability may be imposed administratively by the board*  
30 *pursuant to Section 1055.*

31 *(d) In determining the appropriate amount, the court, or the*  
32 *board, as the case may be, shall take into consideration all relevant*  
33 *circumstances, including, but not limited to, the extent of harm*  
34 *caused by the violation, the nature and persistence of the violation,*  
35 *the length of time over which the violation occurs, and the*  
36 *corrective action, if any, taken by the violator.*

37 *(e) No liability shall be recoverable under this section for any*  
38 *violation for which liability is recovered under Section 1052 or*  
39 *1846.*

1     (f) *All funds recovered pursuant to this section shall be deposited*  
2     *in the Water Rights Fund established pursuant to Section 1550.*

3     ~~SECTION 1.~~

4     ~~SEC. 20.~~ Section 2525 of the Water Code is amended to read:

5     2525. Upon petition signed by one or more claimants to water  
6     of any stream system, requesting the determination of the rights  
7     of the various claimants to the water of that stream system, or upon  
8     its own motion, the board shall, if, upon investigation, it finds the  
9     facts and conditions are such that the public interest and necessity  
10    will be served by a determination of the water rights involved,  
11    enter an order granting the petition or motion and make proper  
12    arrangements to proceed with the determination.

13    ~~SEC. 2.~~

14    ~~SEC. 21.~~ Section 2526 of the Water Code is amended to read:

15    2526. As soon as practicable after granting the petition or  
16    motion the board shall prepare and issue a notice setting forth the  
17    following:

18    (a) The facts of the entry of the order and of the pendency of  
19    the proceedings.

20    (b) That all claimants to rights to the use of water of the stream  
21    system are required to inform the board within 60 days from the  
22    date of the notice, or such further time as the board may allow, of  
23    their intention to file proof of claim.

24    (c) The date prior to which all claimants to rights to the water  
25    of the stream system shall notify the board in writing of their  
26    intention to file proof of claim and the address to which all  
27    subsequent notices to the claimant relating to the proceedings may  
28    be sent.

29    (d) A statement that all claimants will be required to make proof  
30    of their claims at a time to be fixed by the board after the  
31    conclusion of its investigation.

32    ~~SEC. 3.~~

33    ~~SEC. 22.~~ Section 2550 of the Water Code is amended to read:

34    2550. As soon as practicable after granting the petition or  
35    motion, the board shall begin an investigation of the stream system,  
36    of the diversion of water, of all beneficial uses being made of the  
37    water, and of the water supply available for those uses, and shall  
38    gather such other data and information as may be essential to the  
39    proper determination of the water rights in the stream system.

1     ~~SEC. 4.~~

2     *SEC. 23.* Section 2763.5 of the Water Code is amended to read:

3     2763.5. (a) No exception to the order of determination shall  
4 be considered, except in the court's discretion for good cause  
5 shown, unless the matter of the exception was presented to the  
6 board in the form of an objection. Good cause includes, but is not  
7 limited to, the existence of newly discovered relevant evidence  
8 which, in the exercise of reasonable diligence, could not have been  
9 presented to the board during the board's proceedings.

10    (b) This section does not apply to persons to whom the board  
11 did not mail either (1) written notice of the board meeting at which  
12 the petition or motion pursuant to Section 2525 is to be considered  
13 as an item of business, or (2) written notice of the pendency of the  
14 proceedings pursuant to Section 2526.

15     *SEC. 24.* Section 5100 of the Water Code is amended to read:

16     5100. As used in this part:

17    (a) "Best available technologies" means technologies at the  
18 highest technically practical level, using flow totaling devices, and  
19 if necessary, data loggers and telemetry.

20    (b) "Best professional practices" means practices attaining and  
21 maintaining the accuracy of measurement and reporting devices  
22 and methods.

23    (c) "Diversion" means taking water by gravity or pumping from  
24 a surface stream or subterranean stream flowing through a known  
25 and definite channel, or other body of surface water, into a canal,  
26 pipeline, or other conduit, and includes impoundment of water in  
27 a reservoir.

28    (d) "Person" means all persons whether natural or artificial,  
29 including the United States of America, State of California, and  
30 all political subdivisions, districts, municipalities, and public  
31 agencies.

32    ~~(e) "Tidal zone" means those portions of the Sacramento-San~~  
33 ~~Joaquin Delta as described in Section 12220 that are ordinarily~~  
34 ~~subject to tidal action.~~

35     *SEC. 25.* Section 5101 of the Water Code is amended to read:

36     5101. Each person who, after December 31, 1965, diverts water  
37 shall file with the board, prior to July 1 of the succeeding year, a  
38 statement of his diversion and use; provided, however, that no  
39 statement need be filed if the diversion is any of the following:

1 (a) From a spring ~~which~~ *that* does not flow off the property on  
2 which it is located *and from which the person's aggregate*  
3 *diversions do not exceed 25 acre-feet in any year.*

4 (b) Covered by ~~an application~~ *a registration for small domestic*  
5 *or livestock stockpond uses*, permit or license to appropriate water  
6 on file with the board.

7 (c) Included in a notice filed pursuant to Part 5 (commencing  
8 with Section 4999) of this division.

9 (d) Regulated by a watermaster appointed by the department,  
10 *and included in annual reports filed with a court or the board by*  
11 *the watermaster, which reports identify the persons who have*  
12 *diverted water and give the general purpose and place of, and use*  
13 *and the quantity of, water that has been diverted from each source.*

14 ~~(e) Reported by the department in its hydrologic data bulletins.~~

15 ~~(f) Included in the consumptive use data for the delta lowlands~~  
16 ~~published by the department in its hydrologic data bulletins.~~

17 ~~(g)~~

18 (e) Included in annual reports filed with a court or the board by  
19 a watermaster appointed by a court or pursuant to statute to  
20 administer a final judgment determining rights to water, which  
21 reports identify the persons who have diverted water and give the  
22 general place of use and the quantity of water which has been  
23 diverted from each source.

24 ~~(h)~~

25 (f) For use in compliance with ~~the provisions of~~ Article 2.5  
26 (commencing with Section 1226) of, *or Article 2.7 (commencing*  
27 *with Section 1228) of, Chapter 1 of Part 2 of this division.*

28 (g) *A diversion that occurs before January 1, 2009, if any of*  
29 *the following applies:*

30 (1) *The diversion is from a spring that does not flow off the*  
31 *property on which it is located, and the person's aggregate*  
32 *diversions exceed 25 acre-feet in any year.*

33 (2) *The diversion is covered by an application to appropriate*  
34 *water on file with the board.*

35 (3) *The diversion is reported by the department in its hydrologic*  
36 *data bulletins.*

37 (4) *The diversion is included in the consumptive use data for*  
38 *the Delta lowlands published by the department in its hydrologic*  
39 *data bulletins.*

40 SEC. 26. Section 5103 of the Water Code is amended to read:



1 5103. Each statement shall be prepared on a form provided by  
2 the board. The statement shall include all of the following  
3 information:

4 (a) The name and address of the person who diverted water and  
5 of the person filing the statement.

6 (b) The name of the stream or other source from which water  
7 was diverted, and the name of the next major stream or other body  
8 of water to which the source is tributary.

9 (c) The place of diversion. ~~If a public land survey has been~~  
10 ~~made, location of diversion works shall be described to the nearest~~  
11 ~~40-acre subdivision. If not, it shall be described by reference to~~  
12 ~~nearest local landmarks or other recorded surveys. The location~~  
13 ~~of the diversion works shall be depicted on a specific United States~~  
14 ~~Geological Survey topographic map, or shall be identified using~~  
15 ~~the California Coordinate System, or latitude and longitude~~  
16 ~~measurements. If assigned, the public land description to the~~  
17 ~~nearest 40-acre subdivision and the Assessor's Parcel Number~~  
18 ~~shall also be provided.~~

19 (d) The capacity of the diversion works and of the storage  
20 reservoir, if any, and the months in which water was used during  
21 the preceding calendar year.

22 (e) (1) On and after January 1, 2012, monthly records of water  
23 diversions. The measurements of the diversion shall be made using  
24 best available technologies and best professional practices. ~~Nothing~~  
25 ~~in this paragraph shall be construed to require the implementation~~  
26 ~~of technologies or practices that are not locally cost effective.~~

27 (2) Paragraph (1) does not apply to a surface water diversion  
28 with a combined diversion capacity from a natural channel that is  
29 less than ~~50~~ *one* cubic feet per second ~~or to diverters using siphons~~  
30 ~~in the tidal zone.~~

31 (3) (A) The terms of, and eligibility for, any grant or loan  
32 awarded or administered by the department, the board, or the  
33 California Bay-Delta Authority on behalf of a person that is subject  
34 to paragraph (1) shall be conditioned on compliance with that  
35 paragraph.

36 (B) Notwithstanding subparagraph (A), the board may determine  
37 that a person is eligible for a grant or loan even though the person  
38 is not complying with paragraph (1), if both of the following apply:

39 (i) The board determines that the grant or loan will assist the  
40 grantee or loan recipient in complying with paragraph (1).

(ii) The person has submitted to the board a one-year schedule for complying with paragraph (1).

(C) It is the intent of the Legislature that the requirements of this subdivision shall complement and not affect the scope of authority granted to the board by provisions of law other than this article.

(f) For persons not subject to paragraph (1) of subdivision (e), a description of the acreage of each crop irrigated, the average number of people served with water, the average number of stock watered, and the nature and extent of any other use during the preceding calendar year, or other equivalent information that indicates the quantity of water used as may be prescribed by the board. Those who maintain water measuring devices and keep monthly records of water diversions shall state the quantity of water diverted by months during the preceding calendar year.

(g) The purpose of use.

(h) A general description of the area in which the water was used. ~~If the water was used on an area within the  $\frac{1}{4}$ -section containing the point of diversion, a statement to that effect will suffice; otherwise a description or sketch of the general area of use shall be given.~~ *The location of the place of use shall be depicted on a specific United States Geological Survey topographic map and on any other maps with identifiable landmarks. If assigned, the public land description to the nearest 40-acre subdivision and the Assessor's Parcel Number shall also be provided.*

(i) The year in which the diversion was commenced as near as is known.

*SEC. 27. Section 5106 of the Water Code is amended to read:*

5106. (a) Neither the statements submitted under this part nor the determination of facts by the board pursuant to Section 5105 shall establish or constitute evidence of a right to divert or use water.

(b) (1) The board may rely on the names and addresses included in statements submitted under this part for the purpose of determining the names and addresses of persons who are to receive notices with regard to proceedings before the board.

(2) Notwithstanding paragraph (1), any person may submit, in writing, a request to the board to provide notification to a different address, and the board shall provide the notification to that address.

(3) If the board provides notice to persons who file statements under this part, the notice shall not be determined to be inadequate on the basis that notice was not received by a person, other than a party to whom the board's action is directed, who fails to file a statement required to be filed under this part.

(4) This subdivision does not affect the requirement in Section 2527 to provide notice to all persons who own land that appears to be riparian to the stream system.

(c) In any proceeding before the board to determine whether an application for a permit to appropriate water should be approved, any statement submitted under this part or determination by the board pursuant to Section 5105 is evidence of the facts stated therein.

*(d) (1) In any proceeding before the board in which it is alleged that an appropriative right has ceased or is subject to forfeiture for nonuse because water has not been put to beneficial use, it shall be deemed that no use required to be included in a statement submitted under this part occurred unless that use is included in a statement submitted under this part.*

*(2) Paragraph (1) does not apply to any use that occurred before January 1, 2009.*

SEC. 28. Section 5107 of the Water Code is amended to read:

5107. (a) The making of any willful misstatement pursuant to this part is a misdemeanor punishable by a fine not exceeding one thousand dollars (\$1,000) or by imprisonment in the county jail for not to exceed six months, or both.

(b) Any person who *fails to file a statement required to be filed under this part for a diversion or use that occurs after January 1, 2009, or who* makes a material misstatement pursuant to this part may be liable civilly as provided in subdivision (c).

(c) Civil liability may be administratively imposed by the board pursuant to Section 1055 in an amount not to exceed ~~five hundred~~ *twenty-five thousand dollars* ~~(\$500)~~ *(\$25,000)* for each violation. In determining the appropriate amount, the board shall consider all relevant circumstances, including, but not limited to, all of the following factors:

- (1) The extent of harm caused by the violation.
- (2) The nature and persistence of the violation.
- (3) The length of time over which the violation occurs.
- (4) Any corrective action undertaken by the violator.

1 (d) All funds recovered pursuant to this section shall be  
2 deposited in the Water Rights Fund established pursuant to Section  
3 1550.

4 (e) Remedies under this section are in addition to, and do not  
5 supersede or limit, any other remedies, civil or criminal.

6 SEC. 29. Section 5108 of the Water Code is repealed.

7 ~~5108. Statements filed pursuant to this part shall be for~~  
8 ~~informational purposes only, and neither the failure to file a~~  
9 ~~statement nor any error in the information filed shall have any~~  
10 ~~legal consequences whatsoever other than those specified in this~~  
11 ~~part.~~

12 SEC. 30. No reimbursement is required by this act pursuant  
13 to Section 6 of Article XIII B of the California Constitution because  
14 the only costs that may be incurred by a local agency or school  
15 district will be incurred because this act creates a new crime or  
16 infraction, eliminates a crime or infraction, or changes the penalty  
17 for a crime or infraction, within the meaning of Section 17556 of  
18 the Government Code, or changes the definition of a crime within  
19 the meaning of Section 6 of Article XIII B of the California  
20 Constitution.